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October 17, 2007

**BY CM/ECF**

The Honorable Mary Pat Thyngne  
United States District Court  
844 North King Street  
Wilmington, DE 19801

Re: Roquette Freres v. SPI Pharma, Inc., et al., C.A. No. 06-540-\*\*\*

Dear Judge Thyngne:

I am writing on behalf of SPI Pharma, Inc. ("SPI") to request that the Court grant SPI an extension of time to answer the contention interrogatories propounded by Roquette Freres ("Roquette") in the above-captioned case.

In a discovery teleconference on August 28, 2007, the Court directed the parties to exchange contention interrogatory responses by October 22, 2007, on the assumption that SPI would have had an opportunity by that date to depose key Roquette witnesses. The testimony of these witnesses will allow SPI to answer the contention interrogatories more fully and accurately.

During a subsequent discovery teleconference, on September 14, 2007, the Court directed Roquette to produce its witnesses for deposition in the United States rather than in Paris, France. Roquette offered November 13-16, 2007 as the earliest available deposition dates for its three noticed witnesses and Rule 30(b)(6) designee, which SPI accepted. The Court indicated during the September 14 teleconference that if SPI was not able to depose these key witnesses prior to October 22, the Court would grant SPI more time to answer Roquette's contention interrogatories. *See* Transcript of September 14, 2007 Teleconference, at 23 (attached hereto as Exhibit A).

YOUNG CONAWAY STARGATT & TAYLOR, LLP

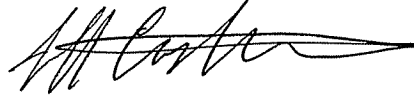
The Honorable Mary Pat Thyng

October 17, 2007

Page 2

SPI has not had an opportunity to depose any Roquette witnesses, and will not have such an opportunity until mid-November. SPI respectfully requests, therefore, that the Court grant the parties until November 30, 2007 to exchange their contention interrogatory responses, which will allow a reasonable time for SPI to obtain and review the transcripts from the mid-November depositions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeff Castellano', with a long horizontal flourish extending to the right.

Jeffrey T. Castellano (#4837)

JTC:mcm  
Attachment

cc: Clerk, U.S. District Court (By CM/ECF and Hand Delivery)  
Mary B. Graham, Esquire (By CM/ECF and Hand Delivery)  
Julia Heaney, Esquire (By CM/ECF and Hand Delivery)  
Douglas V. Rigler, Esquire (By E-mail)

# **EXHIBIT A**

IN AND FOR THE DISTRICT OF DELAWARE

ROQUETTE FRÈRES,

CIVIL ACTION

Plaintiff,

V.

SPI PHARMA, INC. and DRYTEC LTD.,

NO. 06-540 (MPT)

Defendants.

Wilmington, Delaware  
Friday, September 14, 2007 at 12:32 p.m.  
*TELEPHONE CONFERENCE*

BEFORE: HONORABLE **MARY PAT THYNGE**, Magistrate Judge

APPEARANCES:

MORRIS NICHOLS ARSHT & TUNNELL, LLP  
BY: JULIA HEANEY, ESQ.

and

YOUNG &amp; THOMPSON

BY: ANDREW J. PATCH, ESQ., and  
JEFFREY R. SNAY, ESQ.  
(Arlington, Virginia)

Counsel for Plaintiff

YOUNG CONAWAY STARGATT & TAYLOR, LLP  
BY: JEFFREY T. CASTELLANO, ESQ.

and

Brian P. Gaffigan  
Registered Merit Reporter

1 APPEARANCES: (Continued)

2

3

MORGAN LEWIS & BOCKIUS, LLP  
BY: BRIAN P. MURPHY, ESQ., and  
DANIEL P. MURPHY, ESQ.  
(New York, New York)

5

Counsel for Defendants

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7

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11

P R O C E E D I N G S

12

(REPORTER'S NOTE: The following telephone

13

conference was held in chambers, beginning at 12:32 p.m.)

14

THE COURT: Good afternoon, counsel. This is

15

Judge Thyng. Who do I have on the line for Roquette

16

Freres?

17

MS. HEANEY: Your Honor, this is Julie Heaney.

18

And I have, from Young & Thompson, Andrew Patch and Jeffrey

19

Snay.

20

THE COURT: I'm sorry, Julie. The last name of

21

Jeffrey?

22

MS. SNAY: Snay.

23

THE COURT: Thank you. And who do I have on the

24

line on behalf of SPI?

25

MR. CASTELLANO: Good afternoon, Your Honor.

1 This is Jeff Castellano from Young Conaway. John Shaw is  
2 also here; and I have Dan Murphy and Brian Murphy from  
3 Morgan Lewis on the line.

4 MR. B. MURPHY: Good afternoon, Your Honor.

5 THE COURT: Good afternoon. I understand there  
6 is a little problem that has arisen between the parties  
7 concerning our last teleconference, so let's get to the  
8 issues about the mannitol.

9 MR. B. MURPHY: Yes, Your Honor. This is Brian  
10 Murphy on behalf of SPI. I think the fundamental problem  
11 we have is the court-ordered production of samples of two  
12 ingredients. These ingredients are not commercial products,  
13 they're trade secret ingredients and the compositions of the  
14 trade secret ingredients are not known to our customers. In  
15 fact, customers are also required to execute confidentiality  
16 agreements in any event as a precaution and so our intention  
17 is to designate these products confidential under the  
18 protective order.

19 Now, the protective order permits one level of  
20 confidentiality. The immediate problem is that pursuant to  
21 those agreed terms, one of the Roquette in-house attorneys  
22 who I believe resides in France is permitted to have access  
23 to the samples, and so we requested that he be excluded from  
24 the parties authorized to have any access to the samples and  
25 also that he and, of course, anyone else from Roquette be

1 prohibited from having access to any documents or test  
2 results that are generated after the plaintiff tests these  
3 ingredients. And so, if we could stop there, that is the  
4 first issue.

5 THE COURT: Okay. Why don't we address it point  
6 by point? It would be easier for me. Thank you.

7 Okay. What is the response from Roquette?

8 MR. PATCH: Your Honor, it's Andrew Patch.  
9 Well, the response from Roquette is that the day before  
10 yesterday is the first time we've heard that this mannitol  
11 HS and mannitol HSE is considered to be any kind of a  
12 confidential product or a trade secret. That's contrary to  
13 what we've been told up to this point in the interrogatory  
14 answers. It also doesn't really make sense to say that the  
15 mannitol is not a commercial product in the same breath and  
16 saying it's sold to customers.

17 Now, whatever might be restrictions placed on  
18 the customers who buy it from SPI, what hasn't been revealed  
19 is what those customers then do with it. I mean this is a  
20 powdered sugar alcohol and it's an excipient for pills and  
21 so it's going to be something that is out there in the  
22 public ultimately.

23 MR. B. MURPHY: Your Honor, that's incorrect.  
24 It's an excipient for pharmaceutical products; it's not sold  
25 to customers as a single ingredient.

1 THE COURT: Okay. I'm going to express my  
2 ignorance with the word "excipient," all right?

3 MR. PATCH: Additive, Your Honor.

4 THE COURT: Additive.

5 MR. PATCH: If we take the example of a pill, we  
6 have got an active ingredient, and then we have got the rest  
7 of the stuff in there that lets you shape it as a pill that  
8 holds together until you eat it.

9 THE COURT: Okay. So what you are saying, for  
10 me to understand -- and just let me take it step by step  
11 counsel, please -- for SPI, what you are saying to me is  
12 that this additive or excipient is blended together or mixed  
13 with something else; it is not sold separately to the  
14 customers?

15 MR. B. MURPHY: Yes, Your Honor.

16 THE COURT: And the customers then, do you have  
17 any idea what the customers do with this once they get it?  
18 Or is what you are saying, they don't do anything with this  
19 separately; it's part and parcel to being part of something  
20 else?

21 MR. B. MURPHY: Yes, they simply take it and  
22 blend it with other active and inactive ingredients; things  
23 like binders, adhering agents, microspheres, whatever you  
24 want to put in your pills and tablets and you compress them.  
25 You sell it as an end-product pharmaceutical.



1 THE COURT: Now, do you know what type of  
2 confidentiality the customers are required to have for this  
3 mannitol HS, that is, an additive to something else that you  
4 sell and that they're together? Are they restricted, for  
5 example, from breaking down and trying to find the chemical  
6 composition and breaking it down? I'm trying to understand  
7 what type of confidentiality is expected from them, the  
8 extent of it.

9 MR. B. MURPHY: Right. Yes. I'm just  
10 conferring with my colleague Daniel Murphy, Your Honor.

11 THE COURT: That's fine. Take your time, if you  
12 need to.

13 MR. B. MURPHY: Yes. I'm just trying to make  
14 sure I get the information correctly.

15 THE COURT: Do you want to put us on mute so you  
16 can talk for a bit?

17 MR. B. MURPHY: No, no. We're good.

18 THE COURT: All right.

19 MR. B. MURPHY: And I will say now that if we  
20 get into this in any detail, I may have to declare the  
21 transcript confidential under the protective order. I won't  
22 do that yet but, in any event, the client advises that the  
23 confidentiality provisions for the customers do in fact  
24 prohibit the customers from reverse engineering what they  
25 receive.

1 THE COURT: Thank you. I didn't think that we  
2 were getting into territory that was necessarily extremely  
3 confidential.

4 MR. B. MURPHY: No, no. Not yet, Your Honor.

5 THE COURT: Okay.

6 MR. PATCH: Your Honor, if I could respond  
7 briefly for Roquette? It's Andrew Patch again.

8 As I understand; and I invite Brian to correct  
9 me if I'm wrong; the mannitol HS and the mannitol HSE,  
10 these two products are sold as such to SPI by its customers  
11 subject to whatever restrictions were just being described,  
12 but then its customers are the ones that then combine them  
13 with other ingredients to make the final pill or drug which  
14 is sold to the ultimate distributors or customers. We're  
15 not aware of any restrictions whatsoever that are placed on  
16 it once it actually gets out there in the public.

17 MR. B. MURPHY: Your Honor, that is incorrect.

18 THE COURT: What is incorrect about it, please?

19 MR. B. MURPHY: Well, those are not sold  
20 individually as ingredients.

21 THE COURT: That's what I thought you had said  
22 originally.

23 MR. B. MURPHY: It is.

24 THE COURT: Even to your own customers?

25 MR. B. MURPHY: Correct.

1 THE COURT: So that is what is incorrect in the  
2 assumption?

3 MR. B. MURPHY: Yes.

4 THE COURT: All right. Thank you.

5 I'm ruling that it's considered to be highly  
6 confidential and will only allow Roquette's outside counsel  
7 and the independent expert to have access to it, which would  
8 exclude -- and I hope I pronounce his name correctly --  
9 well, I'll just indicate anybody from Roquette, including  
10 Roquette's in-house counsel, from having access to either  
11 the product or the test analysis. Now, I'm going to  
12 include, at least at this stage, test results in that. We  
13 could address it later, but I think the test results would  
14 also be included in them and leave it at that for now as a  
15 ruling.

16 Let's go on to the next one as to whether an  
17 inter partes testing of mannitol HS should occur.

18 MR. B. MURPHY: Yes, Your Honor. SPI's position  
19 on that is, as you know, the one product that is in issue  
20 in the case is called Mannogem EZ. That product has been  
21 tested by the plaintiff Roquette. We have requested the  
22 documents reflecting that testing and not a single page of a  
23 single document indicates the protocol or method they used  
24 to test it. There is simply conclusory results.

25 THE COURT: Well, that may affect whether they

1 can produce anything at trial but the question we're talking  
2 about now is on the discovery level.

3 MR. B. MURPHY: Understood, Your Honor.

4 Absolutely understood. But the point is because that is  
5 the situation with Mannogem EZ, we now have an opportunity  
6 to avoid exactly that situation with these other ingredients  
7 that they are considering bringing into the case. We  
8 submitted the case law, and I'm sure Your Honor is aware  
9 that the strong preference and the basic rule is any such  
10 testing should be done on an inter partes basis with the  
11 opportunity for the adversary to be present and record the  
12 information.

13 We just need to be given notice and the right to  
14 appear with, if we want to, one of our experts who can view  
15 and have access to the test as it's conducted; but more  
16 importantly, even the case relied on by Roquette in their  
17 responsive letter points out that, regardless, the other  
18 party is entitled to receive a written protocol to test  
19 method, which I emphasize we still don't have in this case  
20 even for the product that is in suit. And that's what the  
21 patent is all about.

22 So I say they can't have it both ways.  
23 We're not at the beginning of the case. We're not before  
24 the case started. This is the middle of discovery which,  
25 unfortunately, we have been forced to agree to extend

1 because we can't get the discovery we need promptly enough,  
2 and so we're in the middle of it. We're trying to get to  
3 it. We can't take depositions without the documents, and  
4 now they want to bring in the new ingredient that they need  
5 to test. Fine, but they want to hide the information. We  
6 say that is improper and that the case law is very strongly  
7 in favor, particularly under these kinds of circumstances,  
8 to allow both sides to have prior notice, understand what  
9 the protocol is that is going to be used and observe the  
10 tests and have access to whatever results are generated. We  
11 don't want to influence in any way what they do. We just  
12 want to observe it, be present and understand it.

13 THE COURT: I understand what you are saying.

14 What is Roquette's position?

15 MR. PATCH: Your Honor, Roquette's position is  
16 that inter partes testing, this has nothing to do with Rule  
17 34 of the Rules of Evidence because this isn't about  
18 generating evidence to be necessarily introduced at trial.  
19 This is about figuring out whether these products should be  
20 accused or not. It has nothing whatsoever to do with Rule  
21 34. Unless or until we decide any of these products should  
22 be accused, it is frankly none of their business how we test  
23 and what we do with it.

24 The little canard about destruction of documents  
25 and failure to produce regarding the testing that we've done

1 already is also neither here nor there. That was done  
2 internally. According to the ruling you just made, we're  
3 not going to be able to do that anyway and it's going to  
4 be our outside expert, so it's clearly not something that  
5 calls for inter partes testing. The call for that is just  
6 misplaced.

7 THE COURT: How much mannitol did you ask for  
8 to test to determine whether or not the product should be  
9 accused?

10 MR. PATCH: We asked for 10 kilograms of each of  
11 mannitol HS and HSE and SPI counsel agreed to provide that  
12 in the previous telephone conference.

13 THE COURT: Well, at this stage, I understand  
14 what SPI is saying about an inter partes testing of mannitol  
15 HS and HSE. This normally would have been done hopefully  
16 prior to the lawsuit or would have been done during the  
17 lawsuit to determine whether or not either of these products  
18 are subject to claims of infringement. Obviously, testing  
19 that is not done inter partes without indication of what the  
20 protocol is prior to the testing has a different value or  
21 standard, but if Roquette intends to rely upon this testing  
22 to support any claim for infringement, they are going to  
23 have to produce all of the documents related to the testing.

24 MR. PATCH: That's understood, Your Honor.

25 THE COURT: More importantly, I really do think

1       that Roquette should also film this testing.

2               MR. PATCH: Well, we hadn't thought about it but  
3 we will definitely take that under advisement.

4               THE COURT: No, no. I don't think it's under  
5 advisement, I think I said "should."

6               MR. PATCH: I see.

7               THE COURT: Okay?

8               MR. PATCH: Okay.

9               THE COURT: Film the testing as to what is being  
10 done. I have no idea what it necessarily entails. I don't  
11 know how long the process necessarily is. But you have got  
12 to keep a record that is going to pass muster as to Rules of  
13 Evidence later on; and if you don't maintain that record and  
14 this information is discoverable, the court will definitely  
15 look at it as spoliation of evidence. So that is the  
16 conundrum that you find yourself in.

17               So I am going to deny the idea of inter partes  
18 testing, at least at this stage. It does not mean that I  
19 would not reconsider it in this forum, in this case for  
20 another purpose or for a different aspect. So I'm saying  
21 for the purpose now that Roquette has represented to  
22 determine whether or not the allegation of infringement is  
23 going to be raised against either of these products, I'm  
24 not going to require inter partes testing. For any other  
25 purpose, I will reconsider SPI's request and require inter

1 partes testing; but, you know, what is good for SPI to  
2 request is also good for plaintiff to request.

3 MR. B. MURPHY: Understood, Your Honor. This is  
4 Brian Murphy.

5 THE COURT: Now, I wanted to understand, was  
6 there a question that you had to me about just this ruling?

7 MR. B. MURPHY: Yes, Your Honor.

8 THE COURT: Okay. What was the question?

9 MR. B. MURPHY: I wanted to ask -- and this  
10 comes right out of the *Congoleum* case that they relied on.

11 THE COURT: Yes.

12 MR. B. MURPHY: That you also order that we be  
13 provided with a detailed description of the test procedure  
14 before it's conducted.

15 MR. PATCH: For Roquette, Your Honor, again we  
16 think that misses the point and is uncalled for. The first  
17 order of business is for us to determine whether or not  
18 these are going to be accused products. If they end up  
19 being accused products, then obviously it's in our own  
20 interest to describe what we did and how we came to the  
21 conclusion that they're within the scope of the patent. If  
22 they're not accused products, then it's just none of SPI's  
23 business what we did or how we did it.

24 THE COURT: Well, I'm going to require you  
25 not to disclose it to SPI but you had better well maintain



1 a detailed test protocol or procedure that was done. Again,  
2 because it goes to the issue of potentially destroying  
3 evidence. And you're right, if it's not accused, it doesn't  
4 make a bit of difference.

5 MR. PATCH: Right. That's the point.

6 THE COURT: If they are accused, it does make  
7 a huge difference, and SPI will be back with the issue  
8 concerning an inter partes testing, which I will consider.

9 MR. PATCH: Understood.

10 MR. B. MURPHY: Just so I'm clear, Your Honor,  
11 if they accuse these ingredients and try to inject them into  
12 this case and take further discovery, at the time of trial  
13 we will be moving in limine to exclude any evidence of this  
14 sort that they try to rely on.

15 THE COURT: I understand that. I understand  
16 what you are saying. But if they're going to just rely on  
17 these tests alone, you're right, they may have some serious  
18 problems.

19 MR. B. MURPHY: Thank you, Your Honor.

20 THE COURT: They may have some serious problems.  
21 Now, I wanted to ask why did you need 10 kilograms?

22 MR. PATCH: Well, that's what we felt would be a  
23 safe quantity to make sure we can do what we need to do.

24 MR. B. MURPHY: Your Honor, this is Brian Murphy  
25 again. We don't particularly care about the amount.

1 THE COURT: Okay.

2 MR. B. MURPHY: When we relayed that to the  
3 client, they kind of looked at us like we were nuts.

4 THE COURT: Yes.

5 MR. B. MURPHY: They said, "Isn't one kilo  
6 more than enough for whatever they need?" So I think we  
7 went back and somebody communicated that to our adversary.  
8 I just don't think we ever quite agreed on the amount. And  
9 as I say, I don't particularly care as long as counsel for  
10 Roquette considers what they need and want to do with it and  
11 asks for an appropriate amount, no more than 10 kilos. If  
12 it's less, that's what my client would prefer. If they  
13 really think they need more, that's fine, just tell us.

14 THE COURT: Well, the question I have to  
15 Roquette and Andrew is this: Is this what counsel is  
16 estimating or is this what is indicated to you that is  
17 necessary by discussions with whoever is going to be doing  
18 the testing?

19 MR. PATCH: The former, Your Honor, to be quite  
20 candid.

21 THE COURT: Okay.

22 MR. PATCH: I think we really need more than one  
23 kilo but I doubt we need 10.

24 THE COURT: Well, I'll give you the right to  
25 have up to 10, but why don't we start off with a lower

1 amount because you are going to be the one responsible.  
2 Let's put it this way. Counsel for Roquette is going to be  
3 responsible for what happens to this product. And to the  
4 extent that it's more that you have, it's kind of like the  
5 way I look at it like uranium and plutonium when you hear  
6 about plutonium and uranium and all these other products  
7 being lost by government. Counsel is going to be facing the  
8 same problem. The more you have, the more you have the  
9 opportunity to lose.

10 MR. PATCH: Okay.

11 THE COURT: And it's your responsibility because  
12 you're going to have to treat the sample material and any  
13 documents generated as highly confidential. If it's in  
14 your possession or your expert's possession, it's going to  
15 have to be in a locked cabinet. You will maintain a log as  
16 to who you distribute it to. I'm not saying you have to  
17 produce that log right now. I'm just saying that these  
18 are steps that you are going to have to do to maintain the  
19 confidentiality of it, along those lines, so that we know;  
20 and you will also maintain who the independent expert is.  
21 Now, I'm not going to require you right now to produce under  
22 the protective order who's testing the material, but you are  
23 probably going to have to produce it in the future.

24 MR. PATCH: Okay.

25 THE COURT: And as I said, maintain any and all

1 documents that would deal with the protocol, how the test  
2 procedure was being done, including raw data, test  
3 materials, protocol and results. I'm asking you to hold on  
4 to this stuff because it may be something that is going to  
5 be relevant later on. And once the court has cautioned in  
6 this regard, if any of this material gets lost, it's going  
7 to be your head on the chopping block. Do you understand?

8 MR. PATCH: Sure.

9 THE COURT: Let's talk about production of  
10 witnesses for depositions in the United States.

11 MR. B. MURPHY: Your Honor, just one  
12 clarification.

13 THE COURT: Sure.

14 MR. B. MURPHY: Roquette also must film the  
15 tests?

16 THE COURT: Oh, yes. I apologize. Yes.  
17 Roquette also must film the test. That was assumed before.  
18 Yes.

19 MS. HEANEY: Your Honor this is Julie Heaney. I  
20 didn't hear your ruling on whether the testing expert must  
21 be identified.

22 THE COURT: I said the testing expert does not  
23 need to be identified presently under the protective order  
24 but probably will be required to be identified in the  
25 future.

1 MR. B. MURPHY: Your Honor, then I have a  
2 question about that. The protective order requires it.

3 THE COURT: Oh, I couldn't remember if it did.

4 MR. B. MURPHY: No, it does.

5 THE COURT: Okay. Then fine, that person is  
6 identified. I apologize. I couldn't remember if it had  
7 been.

8 MR. B. MURPHY: Yes.

9 THE COURT: I didn't mean to modify the  
10 protective order in that regard.

11 MR. B. MURPHY: Okay.

12 THE COURT: That was my confusion, counsel. I  
13 apologize. Yes. The short answer to it, Julie, is yes, in  
14 light of that.

15 The next issue is whether or not Roquette  
16 should produce the witnesses for deposition in the United  
17 States. And I'm not exactly certain, counsel, based upon  
18 the reading of both parties submissions, whether this was a  
19 misunderstanding between counsel or not.

20 MR. B. MURPHY: Yes, Your Honor. Brian Murphy.  
21 Oren Langer is on a holiday today. I did speak with him.

22 THE COURT: Good for him.

23 MR. B. MURPHY: He is a good man. But I said,  
24 look, here is what is stated in the letter. Did you ever  
25 have a conversation like that with Mr. Rigler? He said

1 never.

2 THE COURT: And Mr. Rigler is not here either.

3 MR. PATCH: That's right. He is traveling as  
4 well, Your Honor.

5 MR. B. MURPHY: So let's just characterize it  
6 as a clear misunderstanding. And let me further say that  
7 taking depositions in France, for anybody who has been  
8 litigating for any period of time, knows that is very, very  
9 inconvenient and difficult because we must, we do not have a  
10 choice, we must get the consent of the French government.  
11 That is in the Hague Convention, and I have had a great deal  
12 of difficulty in my life getting French depositions lined  
13 up, even with the parties consent. We are not permitted to  
14 consent.

15 THE COURT: Well, in light of a matter that  
16 I'm presently considering about certain things regarding  
17 French production of documents, I understand that it can be  
18 a tedious, drawn out, long process, despite the fact that  
19 the French entity has subjected itself to this court's  
20 jurisdiction for enforcement of its patent. And that's  
21 sometimes true of other entities in Europe as well, not just  
22 France, other countries in Europe as well.

23 What do you do about location of depositions,  
24 subparagraph B in the standard scheduling order that I have,  
25 that any party or representative of a party filing a civil

1 action in this District Court must ordinarily be required,  
2 upon request, to submit to a deposition at the place  
3 designated within this District?

4 MR. PATCH: Your Honor, it's Andrew. We think  
5 that would apply clearly to the 30(b)(6) witness for  
6 Roquette. We are trying to figure out what works.

7 THE COURT: Well, the way I look at it, it  
8 doesn't say that it's limited to 30(b)(6). My standard  
9 language also indicates that a defendant who brings an  
10 action or becomes a counterclaimant or cross-claimant; and I  
11 guess to some degree the argument could be made that SPI, by  
12 raising invalidity-type defenses or inequitable conduct or  
13 the such, could fall into that category; are also considered  
14 to have filed the action in this court for the purpose of  
15 this provision. So, technically, all the depositions are  
16 supposed to happen here. I didn't look at it as just only  
17 30(b)(6). I really didn't.

18 MR. PATCH: I kind of did, Your Honor, in that  
19 it says "any party or representative" and then  
20 representative is officer, director or managing agent. It  
21 does seem like it's 30(b)(6).

22 In any case, what we're trying to do is just --

23 THE COURT: Well, the word is "or" not "and."

24 MR. PATCH: Excuse me?

25 THE COURT: The word is "or," not "and."

1 MR. PATCH: Any party "or" representative.

2 THE COURT: Yes.

3 MR. PATCH: Yes. In any event, we're trying to  
4 propose what we thought would work. Roquette is in a small  
5 town in the north of France called Lestrem. We're willing  
6 to bring all the witnesses to Paris, which is a significant  
7 hike from Lestrem and a significantly more convenient  
8 location, for the sake of being able to line them up and get  
9 a time window in the reasonably near future. Doug has been  
10 working on that and he has been working really hard to do  
11 it.

12 To get them all over here is another proposition  
13 entirely. SPI has noticed not only 30(b)(6) depositions  
14 with multiple topics but also three individuals, so we're  
15 talking at least four and probably five or more witnesses.

16 With respect to Brian's comment about conducting  
17 depositions in France, that may or may not be technically  
18 true under the Hague Convention but I mean we did a week or  
19 two of depositions in Paris earlier this summer. It was no  
20 more difficult than scheduling them at any other location.  
21 That is, whether or not this requirement is a letter, it's  
22 not something that is enforced. When the parties agree to  
23 it, they just do it.

24 MR. B. MURPHY: That's not my experience, Your  
25 Honor, one. And, two, I don't understand his whole



1 position. They filed this case as the plaintiff in August  
2 of 2006. Here we are in September of 2007. My client is  
3 trying to get to the bottom of this case in a relatively  
4 inexpensive way, which is not easy given the New York law  
5 firm's rates and they want us to fly to France? They have  
6 got to be out of their mind, Your Honor, to ask for that.

7 THE COURT: Well, I don't consider that they're  
8 out of their minds to ask for that.

9 MR. B. MURPHY: Well --

10 THE COURT: I think their argument is that, as  
11 a matter of convenience to all, you have a central location  
12 for all the witnesses to be taken within hopefully an  
13 abbreviated time frame requiring counsel from both sides of  
14 the fence to go over to France rather than the reverse.

15 However, I'm going to be ordering that Roquette  
16 produce its people here in the United States. And it can  
17 be at a location that is more convenient than Delaware,  
18 certainly.

19 MR. B. MURPHY: We're happy to take them at  
20 counsel's firm, if that is easier. It's all the same to us.

21 THE COURT: Well, I'm ruling that any place in  
22 the United States they can be taken to the extent that it's  
23 more convenient. It's going to be more convenient for some  
24 of the witnesses as to the location; and it could be that  
25 some of these witnesses may be scheduled to come over to the

1 United States in any event. I don't know. If they're not,  
2 they're still going to have to come over here and have their  
3 depositions taken. We'll leave it at that.

4 MR. B. MURPHY: Your Honor, one point of  
5 clarification.

6 THE COURT: Yes.

7 MR. B. MURPHY: If you recall, at our last  
8 conference, the depositions were ordered to take place  
9 before our supplemental contentions are due which are  
10 currently due on October 22nd.

11 THE COURT: I hope that you can get the  
12 depositions done by then. I don't know whether you can.

13 MR. B. MURPHY: Okay.

14 THE COURT: Try to get them done, and I will  
15 address it if you can't get them done before that time.  
16 Obviously, if you can't, then the court will give you a  
17 little bit more time to get the contention responses done,  
18 but I would suggest that plaintiff work very hard to get  
19 the depositions set up so the contention interrogatories can  
20 be answered promptly. I know that Doug was very concerned  
21 about those; and I would expect the parties would work  
22 cooperatively together to get the depositions done so that  
23 discovery can move along.

24 We have other cutoff dates that you have in your  
25 first amended scheduling order which the court will probably

1 be entering today that are coming up pretty fast, too; and  
2 if there is going to be a problem, serious problem with  
3 this, maybe I ought to know about it now before I actually  
4 sign the first amended scheduling order so you can tell me  
5 if there is going to be a problem with meeting those dates  
6 as well.

7 MR. B. MURPHY: Well, from SPI's perspective,  
8 Your Honor, we fully intend to meet those dates because we  
9 want discovery over. And we're the defendant.

10 THE COURT: Well, we've got a lot to discuss on  
11 December 13th. Counsel, I just want to confirm while I'm on  
12 the phone with you, for our status conference, am I actually  
13 dealing with multiple time zones or are we all in the same  
14 time zone?

15 MR. B. MURPHY: Same time zone, Your Honor.

16 THE COURT: Okay. I'll just be issuing the  
17 order and indicating a time. You can get it from the order.

18 Thank you. Have a great weekend.

19 (The attorneys respond, "Thank you, Your  
20 Honor.")

21 THE COURT: Good-bye now.

22 (Telephone conference ends at 1:03 p.m.)  
23  
24  
25